Nobuyasu Sdn Bhd v Tribunal Rayuan Kastam Diraja Malaysia & Anor

KUALA LUMPUR (HIGH COURT) — ORIGINATING SUMMONS NO WA-24–44–08 OF 2019
NORDIN HASSAN J
2 MARCH 2020

Revenue Law — Goods and Services Tax ('GST') — Claim for input tax — Appellant only entitled to 3.36% of total amount claimed — Whether second respondent's action in reducing and apportioning appellant's input tax claim was with any legal basis and correctly made — Goods and Services Tax Act 2014 — Goods and Services Tax Regulations 2014 reg 46(1)

This was the appellant's appeal against the decision of the Royal Custom's Appeal Tribunal ('the tribunal') pursuant to s 148 of the Goods and Services Tax Act 2014 ('the Act'). The appellant was a Malaysian company in the business of leasing land and properties. An agreement was entered between the appellant with Port Klang Authority and Port Klang Free Zone Sdn Bhd to lease three parcels of land ('P410, P411 and P412'). The appellant constructed a warehouse on parcel P411 to complement the demand for the logistic facilities services. Thereafter, the appellant entered into a tenancy agreement to rent the three parcels of land to CWT Commodities (M) Sdn Bhd. The appellant submitted its application for GST registration since the rental generated from the said tenancy agreement would exceed the registration threshold of RM500,000. The appellant's application for GST registration was approved in April 2018 and the effective date of the GST registration was on 1 May 2018. As regard to the construction of the warehouse before the appellant was registered for GST, the appellant incurred an input tax of RM1,010,006.09. Next, the appellant filed an application to claim the input tax pursuant to reg 46(1) of the Goods and Services Tax Regulations 2014 ('the Regulations'). Meanwhile, on 1 September 2018, the Act was repealed. The second respondent then informed the appellant that the appellant was entitled to the input claim but only 3.36% of the total amount incurred by the appellant in constructing the warehouse which was the amount of RM33,963.70. Dissatisfied, the appellant filed an application to review the said decision pursuant to s 124(1) of the Act. The application for review was rejected by the second respondent and the decision was made after taking into account that the appellant was a taxable person from 1 May 2018 until 31 August 2018. The appellant then filed an appeal to the tribunal pursuant to reg 2 of the Customs (Appeal Tribunal) Regulations 2007. The tribunal dismissed the appeal and hence this appeal by the appellant.

Held, allowing the appeal with costs of RM6,000:

(1) The words in reg 46(1) of the Regulations was plain and unambiguous that the applicant was entitled for the input tax claim which were admitted by the second respondent and the tribunal. There was nothing in reg 46(1) of the Regulations or any other provisions in the Act and its Regulations which expressly provided for the reduction and apportionment of the input tax claim including the formula for the said reduction or apportionment. Here, the respondents' reliance on ss 2, 38 and 39 of the Act and reg 39 of the Regulations was misconceived and untenable (see paras 21–22).

(2) There were no express provisions under the law for the Director General to reduce the appellant's input tax claim nor any formula prescribed for the said reduction and apportionment of the input tax claim. If the law did not prescribe any formula or given any power for the said reduction or apportionment, it simply meant that it could not be done. There was no reason for the appellant not to receive the amount as claimed as the claim was allowable under the law and reasonable as it had been justified by the appellant. Also, the repeal of the Act did not affect the appellant's rights to claim the input tax as the claim was submitted prior to the repeal of the Act (see paras 25, 27 & 29–30).

[Bahasa Malaysia summary

Ini adalah rayuan perayu terhadap keputusan Tribunal Rayuan Kastam Diraja ('tribunal') menurut s 148 Akta Cukai Barang dan Perkhidmatan 2014 ('Akta'). Perayu adalah syarikat Malaysia dalam perniagaan sewaan tanah dan harta. Satu perjanjian telah dimeterai antara perayu dengan Lembaga Pelabuhan Klang dan Port Klang Free Zone Sdn Bhd untuk menyewa tiga bidang tanah ('P410, P411 dan P412'). Perayu membina gudang di petak P411 untuk melengkapkan permintaan untuk perkhidmatan kemudahan logistik. Selepas itu, perayu membuat perjanjian penyewaan untuk menyewa tiga bidang tanah tersebut kepada CWT Commodities (M) Sdn Bhd. Perayu mengemukakan permohonannya untuk pendaftaran GST kerana sewa yang dihasilkan dari perjanjian penyewaan tersebut akan melebihi ambang pendaftaran sebanyak RM500,000. Permohonan perayu untuk pendaftaran GST diluluskan pada bulan April 2018 dan tarikh kuat kuasa pendaftaran GST adalah pada 1 Mei 2018. Berkenaan dengan pembinaan gudang sebelum perayu didaftarkan untuk GST, perayu dikenakan cukai input sebanyak RM1,010,006.09. Selanjutnya, perayu memfailkan permohonan untuk menuntut cukai input menurut peraturan 46(1) Peraturan-Peraturan Cukai Barang dan Perkhidmatan 2014 ('Peraturan'). Sementara itu, pada 1 September 2018, Akta tersebut dimansuhkan. Responden kedua kemudian memaklumkan kepada perayu bahawa perayu berhak atas tuntutan input tetapi hanya 3.36% dari jumlah keseluruhan yang dituntut oleh perayu dalam membina gudang yang berjumlah RM33,963.70. Tidak berpuas hati, perayu memfailkan

permohonan untuk menyemak keputusan tersebut menurut s 124(1) Akta. Permohonan untuk semakan ditolak oleh responden kedua dan keputusan dibuat setelah mengambil kira bahawa perayu adalah orang yang kena cukai dari 1 Mei 2018 hingga 31 Ogos 2018. Perayu kemudian mengemukakan rayuan ke mahkamah berdasarkan peraturan 2 Peraturan-Peraturan Kastam (Tribunal Rayuan) 2007. Tribunal menolak rayuan dan oleh itu rayuan ini oleh perayu.

Diputuskan, membenarkan rayuan dengan kos RM6,000:

(1) Perkataan dalam peraturan 46(1) Peraturan adalah jelas dan nyata bahawa pemohon berhak atas tuntutan cukai input yang diakui oleh responden kedua dan tribunal. Tidak ada apa-apa dalam peraturan 46(1) Peraturan atau peruntukan lain dalam Akta dan Peraturan yang secara nyata memperuntukkan pengurangan dan pembahagian tuntutan cukai input termasuk formula untuk pengurangan atau pembahagian tersebut. Di sini, kebergantungan responden pada ss 2, 38 dan 39 Akta dan peraturan 39 Peraturan adalah disalah anggap dan tidak dapat dipertahankan (lihat perenggan 21–22).

(2) Tidak ada peruntukan yang jelas di bawah undang-undang untuk Ketua Pengarah untuk mengurangkan tuntutan cukai input perayu atau apa-apa formula yang ditentukan untuk pengurangan dan pembahagian tuntutan cukai input tersebut. Sekiranya undang-undang tidak menetapkan apa-apa formula atau diberi kuasa untuk pengurangan atau pembahagian tersebut, ia bermaksud bahawa hal itu tidak dapat dilakukan. Tidak ada alasan bagi perayu untuk tidak menerima jumlah yang dituntut kerana tuntutan itu dibenarkan di bawah undang-undang dan wajar kerana telah diberi justifikasi oleh perayu. Juga, pemansuhan Akta tidak mempengaruhi hak perayu untuk menuntut cukai input kerana tuntutan tersebut telah dikemukakan sebelum pemansuhan Akta tersebut (lihat perenggan 25, 27 & 29–30).]

Cases referred to

Cape Brandy Syndicate v Inland Revenue Commissioner [1921] 1 KB 64, KBD (refd)

Dr Koay Cheng Boon v Majlis Perubatan Malaysia [2012] 3 MLJ 173; [2012] 4 CLJ 445, FC (refd)

Galaxy Energy Technologies Sdn Bhd v Deputy Collector of Stamp Duty, Malaysia & Anor [2011] 5 MLJ 145, CA (refd)

Mandarin Pavilion Sdn Bhd v Chang Vui Lun & Anor [2019] 3 MLJ 395, CA (refd)

Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal [2019] MLJU 742; [2019] 8 CLJ 433, FC (refd)

National Land Finance Co-operative Society Ltd v Director General Of Inland Revenue [1994] 1 MLJ 99; [1993] 4 CLJ 339, SC (refd)

PP v Sihabduin bin Haji Salleh & Anor [1980] 2 MLJ 273; [1981] CLJ 39; [1981] CLJ Rep 82, FC (refd)

Legislation referred to

Customs (Appeal Tribunal) Regulations 2007 reg 2
Goods and Services Tax Regulations 2014 (repealed by Goods And Services Tax (Repeal) Act 2018) regs 33(2), (3), 39, 39(1), (4), 46, 46(1)
Goods and Services Tax Act 2014 ss 2, 38, 39, 57(2), 124(1), 148
Interpretation Acts 1948 and 1967 s 30(1)

Donovan Cheah (Lim Zi Han with him) (Donovan & Ho) for the appellant.
Liew Horng Bin (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Nordin Hassan J:

INTRODUCTION

[1] This is the appellant's appeal against the decision of the Royal Custom's Appeal Tribunal dated 12 July 2019 pursuant to s 148 of the Goods and Services Tax Act 2014 ('the GST Act 2014').

THE BACKGROUND FACTS

[2] The relevant background facts in the present appeal are the following:

(a) the appellant is a Malaysian company in the business of leasing land and properties;

(b) on 9 August 2016, an agreement was entered between the appellant with Port Klang Authority and Port Klang Free Zone Sdn Bhd to lease three parcels of land amounting about RM20.3m. The parcels of land are known as P410, P411 and P412;

(c) in February 2017, the appellant constructed a warehouse on parcel P411 to complement the demand for the logistic facilities services. The construction of the warehouse costs about RM167.56m exclusive GST and was completed in April 2018;

(d) thereafter, on 27 October 2017, the appellant entered into a tenancy agreement to rent the three parcels of land to CWT Commodities (M) Sdn Bhd ('CWT'). The period of the tenancy was from 1 March 2018 until 29 February 2020;

(e) on 4 April 2018, the appellant submitted its application for GST registration since the rental generated from the said tenancy agreement with CWT would exceed the registration threshold of RM500,000;

(f) the appellant's application for GST registration was approved in April 2018 and the effective date of the GST registration was on 1 May 2018. As such, the appellant's rental income from 1 May 2018 would be treated as taxable supplies and subjected to 6% GST;

(g) as regard to the construction of the warehouse before the appellant was registered for GST, the appellant incurred an input tax of RM1,010,006.09 where the detail particulars are as follows:

No.	Tax Invoice	Purchase Amount	GST Amount	Total Amount
1.	J1701/1	292,174.27	17,530.46	309,704.73
2.	J1701/2	420,586.80	25,235.21	445,822.01
3.	J1701/3	2,725,851.62	163,551.10	2,889,402. 72
4.	J1701/2	2,216,195.57	132,971.73	2,349,167.30
5.	J1701/2	2,785,520.91	167,131.25	2,952,652.16
6.	J1701/2	2,659,743.14	159,584.59	2,819,327.73
7.	J1701/2	1,416,926.58	84,961.59	1,500,988.17
8.	J1701/2	792,724.38	47,563.46	840,287.84
9.	J1701/2	281,551.92	16,893.12	298,445.04
10.	J1701/2	290,249.40	17,414.96	307,664.36
11.	J1701/2	533,502.90	32,010.17	565,513.07
12.	J1701/2	558,991.65	33,539.50	592,531.15
13.	J1701/2	1'184,759.37	71,085.56	1,255,844.93
14.	J1701/2	432,933.02	25,975.98	458,909.00
15.	J1701/2	242,623.47	14,557.41	257,180.88
	Total excluding retention sum	16,833,435.00	1,010,006.09	17,843,4451.09

(h) next, by letter dated 20 April 2018, the appellant filed an application to claim the input tax in relation to capital goods in the amount of RM1,010,006.09 pursuant to reg 46(1) of the GST Regulation 2014 ('the Regulations');

(i) meanwhile, on 1 September 2018, the GST Act 2014 was repealed;

(j) the second respondent then by letter dated 28 August 2018 informed the appellant that the appellant was entitled to the input claim pursuant to reg 46 but only 3.36% of the total amount incurred by the appellant in constructing the warehouse which is the amount of RM33,963.70;

(k) for ease of reference the said letter dated 28 August 2018 is reproduced herein below:

A

JABATAN KASTAM DIRAJA MALAYSIA
Ibu Pejabat Kastam Diraja Malaysia
Bahagian GST
Aras 3 – 7 , Blok A, Menara Tulus
No.22 Persiaran Perdana , Precint 2
62100 Putrajaya

Telefon : +603 8882 2624
Faksimili : +603 8882 4911
Email : gstsector2@customs.gov.my

B

Rujukan Kami : KE.HF(163) 677/08-18 Klt. 6 (12)
Tarikh : 16 Zulhijjah 1439H
28 Ogos 2018

FAIM
24 SEP 2018

Nobuyasu Sdn Bhd
No.9, Jalan Pendamar,
C Gempaka Emas Industrial Estate,
Port Klang,
42000 Selangor.

RECEIVED
24 SEP 2018

Tuan,

D TUNTUTAN CUKAI INPUT LUAR BIASA DI BAWAH PERATURAN 46, PERATURAN-PERATURAN CUKAI BARANG DAN PERKHIDMATAN 2014

Saya dengan hormatnya merujuk kepada perkara di atas.

E 2. Melalui surat permohonan yang diterima, pihak tuan memohon kebenaran daripada Ketua Pengarah Kastam untuk melakukan tuntutan cukai input berjumlah RM1,010,606.09 ke atas perolehan barang yang dilakukan bagi tempoh sebelum tarikh kuatkuasa pendaftaran GST, iaitu sebelum 1 Mei 2018.

3. Bagi permohonan yang dilakukan, syarikat telah mengemukakan maklumat dan dokumen-dokumen seperti berikut:

F 3.1 Surat permohonan bertarikh 20 April 2018;

3.2 Penyata tuntutan luar biasa bagi cukai input;

3.3 Invois cukai bagi perolehan barang yang terlibat dengan permohonan tuntutan luar biasa bagi cukai input.

BERKHIDMAT MENJAMIN KESEJAHTERAAN RAKYAT

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(Lampiran 27/09/19 KH. 6 (12))

3.4 Resit rasmi bayaran yang dikeluarkan oleh pihak pelanggan, JDC (Malaysia) Corporation Sdn Bhd bagi keseluruh invois cukai yang telah dicengkam pemulangan tuntutan luar masa bagi cukai input;

3.5 Penyata kewangan yang telah diaudit oleh Crowe Horwath [AF 1018] bagi tahun kewangan berakhir 30 June 2017;

3.6 *Balance sheet* dan *profit & loss* bagi tempoh 1 Julai 2017 sehingga 30 April 2018 yang disediakan oleh pengarah syarikat, Yeo Wee Han, dan

3.7 Salinan invois cukai bertarikh 2 Mei 2018 yang dikeluarkan syarikat kepada pihak pelanggan bagi tawaran gudang.

4. Melalui maklumat dan dokumen yang dikemukakan serta mengambil kira Akta Cukai Barang dan Perkhidmatan 2014 yang akan dimansuhkan mulai 1 September 2018, Kobuyasu Sdn Bhd layak untuk melakukan tuntutan cukai input di bawah Peraturan 48, Peraturan-Peraturan Cukai Barang dan Perkhidmatan 2014 pada nilai RM93,963.78 sahaja dan tertakluk kepada syarat-syarat berikut:

4.1 Tuntutan luar masa bagi cukai input yang layak ini perlu dilakukan di dalam Penyata GST-03 bagi tempoh bercukai Julai-September 2018;

4.2 Jika cukai input luar masa (pra pendaftaran GST) telah dituntut pada tempoh bercukai sebelum ini, pihak tuan diminta untuk melakukan pindaan penyata GST-03 dengan mengeluarkan amaun cukai input tersebut;

4.3 Lain-lain perundangan dan polisi Jabatan berkenaan cukai input dan bayaran balik GST masih terpakai terhadap kelulusan permohonan ini;

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(8)

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4.4 Tuntutan kiar dibas bagi cukai input ini mestilah disokong dengan dokumen dan rekod-rekod lain untuk tempoh tujuh (7) tahun, dari tarikh perolehan dan tuntutan cukai input itu dilakukan.

5. Keputusan / penjelasan yang diberikan adalah selaras dengan peruntukan undang-undang dan polisi Jabatan yang sedia ada. Sekiranya berlaku apa-apa perubahan syaratkurat berhubung perkara di atas, Ketua Pengarah Kastam berhak untuk meminda keputusan ini dengan sewajarnya.

C

6. Sila ambil maklum bahawa keputusan ini boleh dibatal / ditarikbalik / tamat pada bila-bila masa sekiranya berlaku perubahan dasar atau wujudnya penyalahgunaan, salah bad maklumat atau salah guna dipihak Nobuyasu Sdn Bhd.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

D

(JURIAH NOOR BT JUHARI)
Bahagian GST
b.p Ketua Pengarah Kastam
Malaysia

E

s.k.:
1. Pgh. GST

2. Fail Timbul

F

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(l) dissatisfied with the decision of the second respondent in the said letter dated 28 August 2018, the appellant filed an application to review the said decision on 26 September 2018 pursuant to s 124(1) of the GST Act 2014;

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(m) the application for review was rejected by the second respondent by letter dated 24 October 2018 and the decision was made after taking into account that the appellant was a taxable person from 1 May 2018 until 31 August 2018. The said letter dated 24 October 2018 is reproduced as follows:

JABATAN KASTAM DIRAJA MALAYSIA
Ibu Pejabat Kastam Diraja Malaysia
Bahagian GST
Aras 3 - 7 , Blok A, Menara Tuiow
No.22 Persiaran Perdana , Presint 3
62100 Putrajaya

Telefon : +603 8882 0624
Faksimil (1 : +603 8882 4911
Email : gstsector2@customs.gov.my

Rujukan Kami : KE.HF(163) 677/08-19 Klt.2 (3,4,5)
Tarikh : 15 Safar 1440H
24 Oktober 2018

Nobuyasu Sdn Bhd
No.8, Jalan Pendamar,
Compaka Emas Industrial Estate,
Port Klang,
42000 Selangor.

Tuan,

KEPUTUSAN TUNTUTAN CUKAI INPUT LUAR BIASA DI BAWAH PERATURAN 46, PERATURAN-PERATURAN CUKAI BARANG DAN PERKHIDMATAN 2014

Saya dengan hormatnya merujuk kepada perkara di atas dan surat tuyuan dari pihak Tuan bertarikh 26 September 2018.

2. Melalui surat tuyuan yang dikemukakan, pihak tuan memohon untuk diberi kelulusan penuh ke atas permohonan asal yang dikemukakan. Nilai GST yang terlibat dengan permohonan yang dilakukan adalah berjumlah RM1,010,006.09.

3. Pihak kami telah melakukan proses verifikasi ke atas dokumen-dokumen yang dikemukakan serta melakukan kaedah penginaan tuntutan yang sewajarnya. Cukai input luar biasa yang boleh dipertimbangkan untuk kelulusan Ketua Pengarah Kastam adalah GST yang dibayar ke atas perolehan barang pendagaan bagi tempoh sebelum tarikh kuatkuasa pendaftaran GST, dan berhubung kait dengan pembukaian bercukai yang dilakukan semasa mojasi orang kena cukai di bawah perundangan GST.

BERKHIDMAT MENTERJEMAHKAN TRADISI

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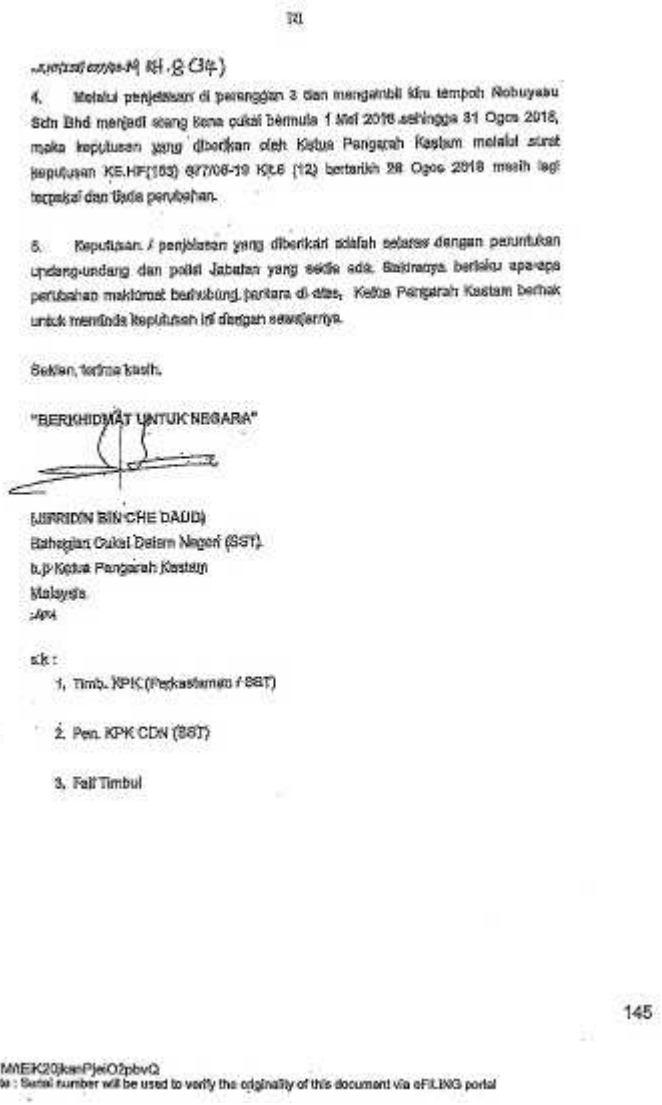

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...sambungan kepada M/S (3/4)

4. Melalui penjelasan di perenggan 3 dan mengambil kira tempoh Nobuyasu Sdn Bhd menjadi orang kena cukai bermula 1 Mei 2018 sehingga 31 Ogos 2018, maka keputusan yang diberikan oleh Ketua Pengarah Kastam melalui surat keputusan KE.HF(153) 677/06-19 K(L6 (12) bertarikh 28 Ogos 2018 masih lagi terpakai dan tiada perubahan.

5. Keputusan / penjelasan yang diberikan adalah selaras dengan peruntukan undang-undang dan polisi Jabatan yang sedia ada. Sekiranya berlaku apa-apa perubahan maklumat berhubung perkara di atas, Ketua Pengarah Kastam berhak untuk menarik keputusan ini dengan sewajarnya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

(JIRRIDIN BIN CHE DAUD)
Bahagian Cukai Dalam Negeri (SST)
b.p Ketua Pengarah Kastam
Malaysia

s.k :
1. Timb. KPK (Perkastaman / SST)
2. Pen. KPK CDN (SST)
3. Fail Timbul

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(n) the appellant then filed an appeal to the Tribunal pursuant to reg 2 of the Customs (Appeal Tribunal) Regulations 2007;

(o) on 12 July 2019, the Tribunal dismissed the appellant's appeal; and

(p) hence, the present appeal by the appellant against the said decision.

THE APPELLANT'S GROUNDS OF APPEAL

[3] The appellant's grounds of appeal are the following:

(a) there is no basis in law to limit and apportion the appellant's input tax claim due to the repeal of the GST Act and/or the period in which the appellant was a GST registered person;

(b) the calculation by the second respondent with regards to the amount of input tax to be paid to the appellant in the sum of RM33,963.70 is wrong and/or takes into account of wrong facts and failed to consider relevant factors;

(c) the second respondent's calculation in relation to the input tax is discriminatory against the appellant; and

(d) the second respondent had violated the appellant's legitimate and reasonable expectation.

THE RESPONDENT'S SUBMISSION

[4] Conversely, the respondents in essence submitted that the second respondent was correct to apportion the appellant's input tax claim based on the principles deduced from the input tax recovery in s 2, 38 and 39 of the GST Act 2014 as well as reg 39 of the GST Regulations 2014.

FINDINGS OF THIS COURT

[5] The core issue in the present appeal is whether the second respondent's action in reducing and apportioning the appellant's input tax claim was with any legal basis and correctly made.

[6] At the outset, it is an undisputed fact that the appellant was entitled to the input tax claim pursuant to reg 46(1) of the GST Regulations 2014. This is clearly stated in the second respondent's letter dated 28 August 2018. Further, the Tribunal also has made the same finding where it states in its grounds of judgment as follows:

> iv. Perayu sebagai orang kena cukai dan orang berdaftar semasa tempoh pelaksanakan GST *berhak menuntut cukai input* yang ditanggung dan dibayar ke atas perolehan sesuatu *BARANG* sebelum ia menjadi orang kena cukai seperti mana yang diperuntukkan di bawah *Peraturan 46(1) Peraturan-Peraturan Cukai Barang dan Perkhidmatan 2014.*

[7] However, the respondents contended that the second respondent was empowered to reduce or apportion the applicant's input tax claim based on the legal principles deduced from the input tax recovery in s 2, 38 and 39 of the GST Act 2014 and reg 39 of the GST Regulations 2014.

[8] In this regard, the respondents contended that the amount of input tax claimable must be 'allowable and reasonable' as laid down in s 39(1) of the GST

Act 2014 and must be attributable to taxable supplies as provided under reg 39(1) of the GST Regulations.

[9] Further, the attribution must be used or are to be used for a taxable supply based on the definition of input tax in s 2 of the GST Act 2014 and the 'taxable supply' was made by the taxable person in the course of any business in Malaysia.

[10] As such, it was the respondent's contention that the second respondent was correct in reducing and apportioning the appellant's input tax claim by using the formula as follows:

> Input Tax Paid (RM1,010,006.09) + Useful Life (365 days) x Days as GST Registered Person (123 days) = *RM33,962.70.*

[11] The same formula was adopted by the Tribunal as stated in it grounds of judgment as follows:

$$\text{Jumlah Cukai Input Yang Layak Dituntut} = \frac{\text{Amaun Cukai Input Yang Dibayar}}{\text{Tempoh Usia Guna Barang (Hari)}} \times \text{Tempoh Masa Menjadi Orang Kena Cukai (Hari)}$$

[12] On this issue, it is pertinent to examine the enabling provision for the input tax claim which is s 46(1) of the GST Regulations 2014 that state:

> 46(1) Subject to subregulation (2), the Director General *may* authorize a taxable person to *treat* as if it were input tax, any tax paid on the supply of goods to taxable person before the date with effect from which he was, or was required to be registered, or paid by him on imported goods before that date, for the purpose of a business which was carried on or was to be carried on by him at the time of such supply or payment.

[13] This provision of reg 46(1) is plain and unambigous and must be given its effect by this court based on its plain meaning.

[14] This principle of law has been succintly explained by the Federal Court in the case of *Dr Koay Cheng Boon v Majlis Perubatan Malaysia* [2012] 3 MLJ 173; [2012] 4 CLJ 445 in the following words:

> [48] A statute is the written will of the Legislature. It is the fundamental rule of interpretation of a statute that should be expounded according to the intent of Parliament. *Courts must use the literal rule where a clear meaning of s statute will allow it, ie, interpret the statute literally, according to its ordinary plain meaning*. In the event of the words of the statute being precise and unambiguous in themselves, *it is only just necessary to expound those words in their natural and ordinary sense.*

[15] Likewise in the Federal Court case of *Public Prosecutor v Sihabduin bin Haji Salleh & Anor* [1980] 2 MLJ 273; [1981] CLJ 39; [1981] CLJ Rep 82, where it states:

> The words of Lord Diplock in an authority cited by my Lord President, *Duport Steels Ltd v Sirs*, seem to me to be practicularly apt, for 'the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.

[16] Further, it is trite law that the court cannot add words to a statute or read words which are not stated in it.

[17] In this regard, the Federal Court in *Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal* [2019] MLJU 742; [2019] 8 CLJ 433, held as follows:

> [57] It is well-established principle of interpretation that the court cannot rewrite, recast or reframe then legislation because it has no power to do so. *The court cannot add words to a statute or read words which are not there*. It is also well settled canon of construction that words in a statute cannot be read in isolation, their colour and content derived from their context and every word in a statute is to be examined in its context. The word context has to taken in the widest sense where the court must take in to consideration no only the enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in pari nmateria, and the mischief which the statute is intended to remedy.

[18] In addition, the statute relating to tax must be read strictly by looking what clearly stated therein as explained in plethora of cases.

[19] In the Court of Appeal, case of *Mandarin Pavilion Sdn Bhd v Chang Vui Lun & Anor* [2019] 3 MLJ 395, it was held as follows:

> for tax legislation, any imposition of tax on anybody must be expressly provided for. There is no equity in tax jurisprudence.

[20] Further, in *Cape Brandy Syndicate v Inland Revenue Commissioner* [1921] 1 KB 64, the court held the following:

> In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. *There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.*

[21] Returning to the present case, the words in reg 46(1) of GST Regulations 2014 as alluded to earlier is plain and unambigous that the applicant is entitled for the input tax claim which were admitted by the second respondent and the Tribunal.

[22] There is nothing in reg 46(1) or any other provisions in the GST Act 2014 and its Regulations which expressly provides for the reduction and apportionment of the input tax claim including the formula for the said reduction or apportionment. Here, the respondents reliance on ss 2, 38 and 39 of GST Act 2014 and reg 39 of the GST Regulations 2014 is misconceived and untenable.

[23] If the Parliament intention is to have the input tax reduce or apportion with a certain formula, it would have expressly provided it in the statute as in the following provisions in the GST Regulations 2014:

(a) sub-regs 33(2) and 33(3) — formula to determine adjustment on input tax or output tax when there is a change accounting basis:

> (2) Where a registered person changes from an invoice basis to a payment basis, the tax payable under para (1)(c) shall be an amount determined in accordance with the *following formula*:
>
> $A - B$
>
> Where A is an amount equal to the aggregate amount of the input tax deducted pursuant to subsection 38(1) of the Act in relation to the amounts due that are required to be shown in the list of creditors required to be prepared by the registered person; and
>
> B is an amount equal to the aggregate amount of the output tax accounted in relation to the amounts due that are required to be shnown in the list of debtors required to be prepared by the registered person.
>
> (3) Where a registered person changes from a payment basis to an invoice basis, the tax payable under para (1)(c) shall be an amount determined in accordance with *the following formula*:
>
> $C - D$
>
> Where C is an amount equal to the aggregate amount to the output tax that would have been accounted in relation to the amounts due that are required to be shown in the list of debtors required to be prepared by the registered person, if the person has been accounting for tax payable on an invoice basis; and

D is an amount equal to the aggregate amount of the inout tax that would have been deducted pursuant to subsection 38(1) of the Act in relation to the amounts due that are required to be shown in the list of creditors required to be prepared by the registered person, if the person has been accounting for tax payable on an invoice basis.

(b) sub-reg 39(4) — formula to calculate the recoverable of persentage of residual input tax:

(4) The amount of input tax which a taxable person shall be entitled under sub-regulation (1) shall be an amount determined in *accordance with the following formula*:

$$a = \frac{T - 0}{S - 0} \times 100$$

Where a is the recoverable percentage of residual inoput tax.

T is the total value (exclusive of GST) of taxable supplies made in the taxable period;

O is the total value of any supply within subregulation (3); and

S is the total value of taxable and exempt supplies made in the taxable period.

[24] In addition, if the legislation intended to empower the Director General to make any reduction in relation to the input tax claim, it would have expressly stated in the statute as for example in sub-s 57(2) of the GST Act 2014 as follows:

(2) *The Director General may reduce* or disallow any refund due under this section to the extent that the refund would unjustly enrich the person referred to in subsection (1).

[25] In the present case, there is no express provisions under the law for the Director General to reduce the appellant's input tax claim nor any formula prescribed for the said reduction and apportionment of the input tax claim.

[26] In the letter dated 28 August 2018, the second respondent did not mentioned any formula used for the reduction of the appellant's input tax claim. Likewise, in the letter dated 24 October 2018 which rejected the application for the review of the second respondent's decision on the amount of the input tax claim.

[27] The pertinent point here is that if the law does not prescribed any formula or given any power for the said reduction or apportionment, it simply mean that it cannot be done. This also would avoid any arbitrary and discriminatory decision by the second respondent.

[28] This view is supported by the evidence of the second respondent's witness, SR1, who testified that from approximately 100 similar applications under reg 46, all of them received near 100% of the amount of input tax claim. However, this is not the case in the appellant's claim.

[29] Here, I see no reason for the appellant not to receive the amount as claimed as the claim is allowable under the law and reasonable as it has been justified by the appellant.

[30] I also agree with the counsel for the appellant that the repeal of GST Act 2014 on 1 September 2018 does not affect the appellant's rights to claim the input tax as the claim was submitted prior to the repeal of the Act.

[31] This is clearly provided under s 30(1) of the Interpretation Acts 1948 and 1967, which states:

> 30 *Matters not affected by repeal*
>
> (1) The repeal of a written law in whole or in part *shall not* —
>
> (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or
>
> (b) *affect any right*, privilege, obligation or liability acquired, accrued or incurred *under the repealed law*; and

[32] On the same issue, the Supreme Court in *National Land Finance Co-operative Society Ltd v Director General Of Inland Revenue* [1994] 1 MLJ 99; [1993] 4 CLJ 339, stated as follows:

> a retrospective operation should not be given to a statute to impair an existing right and it has been stated by the UK Court of Appeal in *EWP Limited v Moore* [1992] 1 All ER 880 at 891:
>
> *... that those who have arranged their affairs, as the saying is, in reliance on a decision of these courts which has stood for many years should not find that their plans have been retrosprectively upset ...*
>
> Moreover, one should avoid a construction that inflicts a detriment and as Lord Brightman has said in *Yew Bon Tew & Anor v Kenderaan Bas Mara* [1983] 1 MLJ 1; [1983] 1 CLJ 11:
>
> that *a retrospective enactment inflicts a detriment if it takes away or impairs vested right acquired under existing laws* or create a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past.

[33] Additionally, even if there is any ambiguity in the provision of reg 46(1), although I find its none, it must be resolved in favour of the appellant. This has been held by the Court of Appeal in *Galaxy Energy Technologies Sdn Bhd v*

Deputy Collector of Stamp Duty, Malaysia & Anor [2011] 5 MLJ 145, as follows:

> the taxing act must state in clear and distinct terms. If there is any ambiguity, it must be resolved in favour of the taxpayer.

CONCLUSION

[34] Premised on the aforesaid reasons, the appellant's appeal is allowed with costs of RM6,000.

[35] The appellant's claim for the full amount of RM1,010,006.90 as the input tax claim is also allowed.

Appeal allowed with costs of RM6,000.

Reported by Ahmad Ismail Illman Mohd Razali